IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 11 OF 2002

Mr. Memorial Hemran,
aged 22 years, r/o
Kauntytoly, Gumla-Bihar,
at present lodged in
Central Jail, Aguada,
Goa. ... Appellant.

versus

State
(through P.I.,
Verna Police Station). ... Respondent.

Mr. S. K. Pai, Advocate appointed under Legal Aid Scheme.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM: P. V. HARDAS, J.

DATED: 3RD JULY, 2003.

ORAL JUDGMENT

The Appellant challenges his conviction for an offence punishable under Section 304(II) of the Indian Penal Code and sentence of Rigorous Imprisonment for 7 years passed by the Additional Sessions Judge, South Goa, Margao, in Sessions Case No.37/2000 by Judgment dated 9th October, 2001, in the present Appeal.

2. The facts as are necessary for the decision of the Appeal are set out hereunder:-

On 23rd April, 2000, P.W.13, P.I. Dhinraj Govekar, was attached to the Verna Police Station as Officer in charge. On 24th April, 2000, P.W.1, Ramdas Gautam, came to the Police Station and lodged a complaint at Exh.16 that one person by name Pravin was murdered by the present Appellant. On the basis of the said complaint, an offence was registered vide Crime No.53/2000 under Section 302 of the Indian Penal Code. P.W.13, Dhinraj Govekar, then proceeded to the scene of the offence and drew the scene of offence panchanama in the presence of P.W.7, Shailesh Madkaikar. The scene of offence panchanama is at Exh.PW7/A. From the scene of offence panchanama, M.O.1 broken glass bottle, M.O.2, glass pieces, M.O.3, blood soaked clothes, M.O.4, sample cloth piece were attached. Inquest Panchanama in the presence of P.W.7, Shailesh Madkaikar, was drawn and is at Exh.PW7/B. Vide letter at Exh.PW3/C, the dead body was referred for post mortem. Meanwhile, from the scene of the offence, the Appellant/Accused was arrested and the underwear of the Appellant/Accused was seized in the presence of P.W.3, Joaquim Francisco D'Sa vide Seizure Panchanama at Exh.PW3/A. Vide Exh.PW13/A, a letter was sent to the P.W.D. for drawing the sketch of the scene of offence. P.W.11, Gurudas Naik, drew the sketch and the sketch is at PW11/B. P.W.12, P.S.I. Maruti Naik, was deputed to attach the clothes of the deceased and accordingly, the

clothes of the deceased were attached in the presence of P.W.2, Agnelo Dias, at Exh.PW2/A. The muddemal property was sent to the Chemical Analyser and the Report of the Central Forensic Science Laboratory is at Exh.PW13/C. After completion of the investigation, a charge-sheet against the Appellant/Accused came to be filed. The learned IIIrd Additional District & Sessions Judge, South Goa, Margao, vide Exh.10 framed a charge against the Appellant/Accused for an offence punishable under Section 302 of the Indian Penal Code. The Appellant/Accused denied his guilt and claimed to be tried. The prosecution in support of the evidence examined 13 witnesses.

3. P.W.1 is Ramdas Gautam who was a contractor engaged in supplying labourers at the Verna Industrial Estate. He has stated that Mr. Nirankar Minj informed him that on the earlier night i.e. on 23rd April, 2000, there was a quarrel between the Appellant/Accused and the deceased. He accordingly went to the Verna Police Station and lodged a complaint at Exh.16. P.W.2, Agnelo Dias, in whose presence the clothes of the deceased were attached vide Attachment Panchanama is at Exh.PW2/A. P.W.3 is Joaquim Francisco D'Sa, in whose presence the underwear of the Appellant/Accused M.O.5 came to be attached vide Attachment Panchanama at Exh.PW3A. P.W.4, is Leo Agnelo Succoro Rodrigues, who

on learning about the incident informed the Personal Manager Shri Priolkar. P.W.5, Bhagwant S. Priolkar, is the Personal Manager of Polysac Plastics Ltd. at Verna. He states that one labourer by name Gautam had informed him about the incident and he had gone to the scene of the offence and had thereafter informed the Police. P.W.6 is Anthon Rodrigues, who states that P.W.4, Leo Agnelo Sucorro Rodrigues, had informed him about the murder. P.W.7, Shailesh Madkaikar, is the panch witness in whose presence the scene of offence panchanama at Exh.PW7/A and Inquest Panchanama at Exh.PW7/B was drawn. P.W.8 is Dr. Avinash Pujari, who had conducted the post mortem. He had noticed 5 injuries. The first injury was a contusion with defused margin with abrasion of 2x5 cms. at centre oblique red and fresh of the size of 4 cms. on the forehead. The second injury was a contusion with defused margin, red, fresh and almost verticle, 5x3 cms. on right side temporal region. The third injury was a contusion with defused margin, red, fresh and almost verticle, 8x5 cms. on bypariato occipital area. The fourth injury was a contused abrasion, red and fresh, 2x1x0.5 cms. on the right upper arm. The fifth injury was a contusion, red and fresh, 2.5 cms. x 1.5 cms. x 1 cm. on outer end of the left eye-brow. The sixth injury was a linear abrasion, red and fresh, 3x0.2 cms. on left upper arm. P.W.8, Dr. Avinash

Pujari, found that all the injuries were antemortem in nature. According to him, injury nos.1 to 4 were caused by rough and hard object. On internal examination, he noticed a crack fracture of left parietal bone with extensive subdural haemorrhage. According to him, external injury nos.1 to 6 and the internal damage were sufficient to cause death in the ordinary course of nature. The post mortem report is at Exh.PW.8/A. P.W.9, Mukesh Kesi and P.W.10, Nirantar Minj, are the eye witnesses. P.W.11, Gurudas Naik, drew the sketch of the scene of offence and P.W.12, Maruti Naik, P.S.I. attached the clothes of the deceased. P.W.13, Dhinraj Govekar, is the P.I.

4. The defence of the Appellant/Accused was of denial. The learned Trial Court on consideration of the offence of the prosecution convicted the Appellant/Accused for an offence punishable under Section 304(II) of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonemt for 7 years.

5. Mr. S. K. Pai, learned Counsel appointed under the Legal Aid Scheme to represent the Appellant/Accused, has very ably argued the Appeal and has urged before me that perusal of the evidence of the two eye witnesses namely P.W.9, Mukesh Keiss and P.W.10, Nirankar Minj would reveal that there are

serious inter se discrepancies in their evidence and thus it is not safe to rely on their evidence to sustain the conviction.

6. Mr. S. N. Sardessai, learned Public Prosecutor appearing on behalf of the State has urged that the existence of inter se discrepancies in the evidence of the witnesses is on peripheral or minor aspects of the case and does not affect their credibulity. He has urged, therefore, that the evidence of P.W.9, Mukesh Keiss and P.W.10, Nirankar Minj can be implicitly relied upon by the Court to sustain the conviction.

7. P.W.9, Mukesh Keiss, is an eye witness to the incident. He states that he was knowing the Appellant/Accused. On 23rd April, 2000, he along with some workers had gone to Vasco-da-Gama. There, he and P.W.10, Nirankar Minj, consumed liquor and thereafter had returned home. On returning home, he found that the Appellant/Accused and deceased Pravin were exchanging abuses with each other. One Alban and Nirankar were cooking food. He saw the Accused pushing Pravin and Pravin fell on the ground. The Accused then kicked Pravin on his stomach. The other inmates of the house went outside and slept while the deceased and the Accused slept in the house. In the morning, he noticed

that deceased Pravin was bleeding from his nose. Suspecting some foul play, he locked the room in which the deceased Pravin was lying and reported the matter to the security. He has stated that Alban, Rajesh, Joseph, Inac were staying in the house. There were four rooms in the house. Deceased Pravin was lying in the kitchen. Accused was sleeping in the room next to the kitchen.

8. In the cross-examination, he has admitted that he was knowing the Accused since the time he started working in the Company i.e. one month prior to the incident. He has admitted that Accused and deceased Pravin were fighting outside but subsequently, they came in the kitchen room. When Pravin was pushed, he fell and was lying on the same spot. He was pushing while he was in the kitchen. He has also admitted that in the morning, he saw a bedsheet on the body of Pravin. He also admitted that Alban and Nirankar had tried to separate the Accused and Pravin. He has stated that when the fight took place, he was outside the house but on hearing the noise, he came inside. He has denied the suggestion that the Accused did not push Pravin and also that the Accused did not kick him on the stomach.

9. P.W.10, Nirankar Minj, another eye witness,

states that he was staying in the house along with the others and the Accused was also staying in the same house. He has further stated that on 24th March, 2000, he along with five other persons had gone to Vasco-da-Gama and had returned at 6 p.m. After cooking the food when they were about to have their dinner, a fight between Accused and Pravin started. Accused assaulted Pravin as a result of which Pravin fell in the kitchen. He also stated that he along with Alban saw the Accused was assaulting Pravin on the face. The Accused thereafter went to sleep in the adjacent room. He has stated that the Accused pulled Pravin and made him sleep in the same room and covered him with a bedsheet. He has further stated that he along with others went outside to sleep. In the morning, he found Pravin was lying dead. In the cross-examination, he has admitted that Pravin had also gone to Vasco-da-Gama along with them amd had consumed liquor. He has also admitted that the fight had started in one room but Pravin fell after he was assaulted. He also admitted that he saw Accused giving fist blows on Pravin and thereafter he fell in the kitchen. He has denied the suggestion that he had not seen the Accused assaulting Pravin.

10. I have carefully perused the evidence of the two eye witnesses referred to above. It is true that

P.W.9, Mukesh Kesi, does not state that Pravin had accompanied them for going to Vasco-da-Gama whereas P.W.10, Nirankar Minj, states that Pravin had also gone with them. P.W.9, Mukesh Kesi, stated that he and Nirankar had consumed liquor. P.W.10, Nirankar Minj, states that P.W.9, Mukesh Kesi, had not consumed liquor with him. Apart from those discrepancies which are of extremely minor nature, there are no other inter se discrepancies which would discredit the other eye witnesses. Admittedly, P.W.9, Mukesh Kesi and P.W.10, Nirankar Minj, were residing in the same house along with the Appellant/Accused and the deceased. Their presence at the scene of the offence is natural and their conduct on the next day in immediately informing the security belies any attack on their credibility. I have given my anxious consideration to the argument advanced and I agree with the learned Trial Court that P.W.9, Mukesh Kesi and P.W.10, Nirankar Minj can be implicitly relied upon to sustain the conviction. There is nothing in the cross-examination to discredit the version of the two eye witnesses. Therefore, according to me, the conviction of the Appellant/Accused for an offence punishable under Section 304(II) does not require any interference. The learned Trial Court, however, has awarded sentence of 7 years of Rigorous Imprisonment.

11. Mr. S. K. Pai, learned Counsel for the Appellant has urged before me that looking to the age of the Appellant/Accused and the fact that he is the sole earning member of his family, consisting the aged parents, the sentences may be altered. According to me, looking to the age of the Appellant/Accused and the manner in which the offence has been committed, the Appellant/Accused deserves some leniency. The Appellant/Accused is said to be in Jail for the last more than 3 years and, therefore, according to me, a sentence of Rigorous Imprisonment for 5 years in place of sentence of Rigorous Imprisonment for 7 years would meet the ends of justice.

12. Accordingly, Criminal Appeal No.11 of 2002 is partly allowed. The conviction of the Appellant for an offence punishable under Section 304(II) of the Indian Penal Code is confirmed. However, the sentence of 7 years Rigorous Imprisonment is set aside and is substituted by a sentence of Rigorous Imprisonment for 5 years.

13. A copy of this Judgment be sent to the Appellant/Accused.

P. V. HARDAS, J.

RD.